



Pursuant to Fed. R. Civ. P. 8(b) and for the express purpose of requiring Plaintiff to meet his burden of proof in this suit, Defendants deny each and every allegation contained in Plaintiff's complaint except those expressly admitted herein.

### **SPECIFIC ASSERTIONS AND DENIALS**

1. Defendants can neither admit nor deny that Plaintiff Gonzales is a "devout Christian." Defendants admit Gonzales is incarcerated at the Polunsky Unit of the Texas Department of Criminal Justice ("TDCJ") under a sentence of death.

2. Defendants deny that Gonzales's execution date is scheduled for April 20, 2021. See ECF. No. 21. When he is executed pursuant to the TDCJ Execution Procedure, Defendants deny that he will be executed in a manner that violates the First Amendment or the Religious Land Use and Institutionalized Persons Act of 2000 ("RLUIPA"), 42 U.S.C. § 2000cc et seq.

3. Defendants deny that Gonzales utilized the statutorily required grievance procedures to exhaust his administrative remedies prior to filing suit.

4. Defendants deny that the TDCJ Execution Procedure will be carried out in a manner that will substantially burden Gonzales's religious exercise.

### **JURISDICTION**

5. Defendants admit that this Court has jurisdiction over the subject-matter of this case.

### **VENUE**

6. Defendants admit that venue is proper.

## **PARTIES**

7. Defendants admit that Plaintiff Ramiro Gonzales is incarcerated under a sentence of death at the Polunsky Unit of TDCJ. Defendants deny that he is scheduled to be executed by the State of Texas on April 20, 2021.

8. Defendants admit that Bryan Collier is the Executive Director of TDCJ.

9. Defendants admit that Bobby Lumpkin is the Director of the Correctional Institutions Division of TDCJ and that he is being sued in his official capacity.

10. Defendants admit that Dennis Crowley is the Senior Warden of the Huntsville Unit, where the State of Texas carries out executions.

## **FACTUAL AND LEGAL DENIALS AND ASSERTIONS**

11. Defendants assert the current TDCJ Execution Procedure is the least restrictive means of furthering their compelling penological interests in security and fulfilling the purposes of the State's execution judgment. Defendants assert there is no alternative procedure that would further their compelling interests as it relates to spiritual advisors in the execution chamber.

12. Defendants deny that Gonzales's asserted religious beliefs are sincere and require strict proof thereof.

13. Defendants deny Gonzales's religious exercise will be substantially burdened by the TDCJ Execution Procedure.

14. Defendants deny Gonzales has pleaded facts sufficient to satisfy his burden under RLUIPA.

15. Defendants assert that the TDCJ Execution Procedure is neutral on its face and generally applicable. Defendants deny that the policy evinces hostility toward religion. Defendants deny that strict scrutiny applies to Gonzales' First Amendment claim. Defendants assert that rational basis and the *Turner* factors are the standards to be apply to Gonzales's constitutional challenge.

16. Defendants deny the TDCJ Execution Procedure violates Gonzales First Amendment free exercise rights. Defendants assert that the challenged policy is reasonably related to legitimate penological interests.

17. Defendants deny that Gonzales is entitled to injunctive, declaratory, or any other relief.

### **AFFIRMATIVE DEFENSES**

18. For the purposes of preserving their affirmative defense, Defendants assert that Gonzales failed to properly and fully exhaust administrative remedies prior to filing suit as required under the Prison Litigation Reform Act and require strict proof thereof.

19. Defendants assert Gonzales fails to demonstrate he is entitled to injunctive relief, and as such, Defendants are entitled to Eleventh Amendment immunity.

20. Defendants assert the affirmative defenses of laches and res judicata.

### **CONCLUSION AND PRAYER**

In the absence of strict proof of each and every element of Gonzales's causes of action, his claims should be dismissed. Defendants pray that Gonzales take nothing and the claims against them be dismissed.

Respectfully submitted,

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**ATTORNEYS FOR DEFENDANTS**

**COLLIER, LUMPKIN, AND CROWLEY**

**NOTICE OF ELECTRONIC FILING**

I, **LEAH O'LEARY**, Assistant Attorney General of Texas, certify that I have electronically submitted for filing, a true and correct copy of the above in accordance with the Electronic Case Files System of the Southern District of Texas on Nov. 19, 2021.

/s/ Leah O'Leary  
**LEAH O'LEARY**  
Assistant Attorney General

**CERTIFICATE OF SERVICE**

I, **LEAH O'LEARY**, Assistant Attorney General of Texas, certify that a true and correct copy of the above has been served all attorneys of record through the court's electronic notification system on Nov. 19, 2021.

/s/ Leah O'Leary  
**LEAH O'LEARY**  
Assistant Attorney General